

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

YOLANDA R. EFFINGER

Plaintiff,

v.

WINN DIXIE MONTGOMERY, INC.

Defendant.

*
*
*
*
*
*
*
*
*

Case No. 2:07-CV-657-ID-TFM

MOTION FOR PROTECTIVE ORDER ON TAX RETURNS

Now comes Plaintiff, by and through undersigned counsel and moves this court to issue a protective order pursuant to Federal Rule of Civil Procedure 26 (c) restricting the use, access and dissemination of tax returns and related information produced by Plaintiff during discovery. As grounds for this motion, Plaintiff hereby states as follows:

1. That Plaintiff's tax returns and related information such as W-2s are not absolutely privileged but are nonetheless confidential and are due to be protected from improper use, access and dissemination.

2. That preliminary discussions with Defendant's counsel to develop an agreement with regard to the confidentiality of such documents and information were unsuccessful. Plaintiff therefore assumes that Defendant opposes this motion.

Wherefore, Plaintiff prays that the court issue a protective order restricting the use, access and dissemination of Plaintiff's tax returns and related information essentially in the form of the proposed order attached hereto.

This 9th day of September, 2007.

/s/ Ronald B. Hatcher
Ronald B. Hatcher (HAT 002)
Attorney for Plaintiff

P. O. Box 161442
Atlanta, GA 30321
(404) 526-9440

MEMORANDUM IN SUPPORT

A. Facts:

This is an action for personal injury transferred from the Circuit Court of Montgomery, Alabama based on diversity of citizenship. In paragraph 13 of her complaint, Plaintiff claims loss wages as an item of special damages.

In its initial discovery, Defendant requested Plaintiff to produce the following documents:

“11. Plaintiff’s federal income tax returns for the past seven years.”

“12. Plaintiff’s state income tax returns for the past seven years.”

Plaintiff does not contend that her tax returns and related information are absolutely privileged and not subject to any disclosure. However, she does contend that she retains a qualified privilege. That is, her tax returns are confidential and should remain so in the hands of Defendant.

B. Law:

Plaintiff stipulates for purposes of this motion that certain of her tax returns are

relevant within the meaning of Federal Rule of Civil Procedure (F.R.C.P.), Rule 26(b)(1). However, Plaintiff does not waive and hereby reserves any other objection she has to Defendant's initial requests for federal and state tax returns. F.R.C.P., Rules 26 and 34.

The issue of privilege for this circuit was possibly settled by the decision in *Maddow v. Procter & Gamble Co.*, 107 F.3d 846, (11th Cir. 1997). Nonetheless, courts have retained their inherent authority to fashion orders balancing privacy rights with the policy favoring disclosing of confidential tax and financial information in relevant cases.

In *Constantine v. Constantine*, 274 Ala. 374, 149 So.2d 262(1963), the court sustained the production of tax returns, but noted:

“This is not to be taken as approval of indiscriminate exposure of the contents of such returns when production of copies is required. Courts may and should make proper protective orders governing the use of and access to the contents of such returns”.

274 Ala. At 378-79, 149 So. 2d at 266-67; See also, *Smith v. Bader*, 83 F.R.D. 437 (S.D.N.Y. 1979); *Payne v. Howard*, 75 F.R.D. 465,469 (D.D.C. 1977).

Plaintiff's tax returns and related information should remain confidential once in the hands of Defendant. Plaintiff is entitled to an order restricting the use, access and dissemination of Plaintiff's tax returns and related information under the above authorities and F.R.C.P., Rules 26(c) and 34. Plaintiff has attached a proposed order which protects her rights in this regard. Additionally, Plaintiff's counsel has also attached his certification that he has attempted to resolve this matter with opposing counsel.

Submitted September 9, 2007.

/s/ Ronald B. Hatcher
Ronald B. Hatcher (HAT 002)
Attorney for Plaintiff
P. O. Box 161442
Atlanta, GA 30321
(404) 526-9440

CERTIFICATION

Undersigned counsel hereby certifies that on July 26, 2007 he submitted to opposing counsel a confidential agreement and protective order covering the matters raised in this motion. On August 2, 2007, Randall Morgan, Esq., counsel for Defendant advised undersigned counsel that he could not agree to same as a part of the Joint Rule 26 Plan. Based on the above, undersigned counsel assumes that said counsel for Defendant opposes this motion and attached order.

This 9th day of September, 2007.

/s/ Ronald B. Hatcher
Ronald B. Hatcher (HAT 002)
Attorney for Plaintiff

Proof of Service

I hereby certify that a copy of the foregoing Motion for Protective Order on Tax Returns, Certification and Proposed Order were served on Defendant's Counsel, Randall Morgan, Esq., P. O. Box 116, Montgomery, AL 36101, by electronic mail on September 9, 2007. and by regular U. S. Mail on September 10, 2007.

/s/ Ronald B. Hatcher
Ronald B. Hatcher
Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

YOLANDA R. EFFINGER,

Plaintiff,

v.

WINN DIXIE MONTGOMERY, INC.

Defendant.

*
*
*
*
*
*
*
*

Case No. 2:07-CV-657-ID-TFM

PROTECTIVE ORDER ON TAX RETURNS

Upon motion by Plaintiff, and for good cause shown, the Court hereby enters the following Protective Order, to wit:

The court finds that certain financial information and tax returns produced by Plaintiff during discovery are *confidential* and should remain so while in Defendant's possession. IT IS THEREFORE ORDERED THAT:

All federal tax returns and accompanying schedules, state tax returns and accompanying schedules, W-2s, and social security numbers produced by Plaintiff are *confidential* and cannot be disclosed or disseminate to third parties, without the express consent of Plaintiff, or by specific order of the court.

IT IS FURTHER ORDERED THAT Defendant's attorneys, employees, experts, or investigators take all reasonable steps to preserve the confidentiality of this information and further shall return such information to Plaintiff, including copies, immediately upon the conclusion of this action, or at such time as the court shall otherwise direct.

IT IS FURTHER ORDERD THAT any such confidential information used to support any motion or pleading herein shall be filed under seal, and reference to this Order shall be marked conspicuously thereon.

This _____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE

cc:

Ronald B. Hatcher
Attorney for Plaintiff
P. O. Box 161442
Atlanta, GA 30321

Randall Morgan
Attorney for Defendant
P. O. Box 116
Montgomery, AL 36101